

INTERNAL REVENUE SERVICE

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CONEX 153441-01

The Honorable Paul Ryan
Member, U.S. House of
Representatives
20 South Main Street, Suite 10
Janesville, WI 53545

Attention: Ms. Susie Liston

Dear Congressman Ryan:

I apologize for the delay in responding to your inquiry (copy enclosed) dated August 31, 2001, on behalf of your constituent, [REDACTED]. [REDACTED] asks for guidance on how an employer should deal with an employee who submits a signed Form W-4 claiming exemption from federal income tax withholding. In his example, the employer believes that the Form W-4 may be false. However, the Form W-4 is valid on its face and the employee has apparently not made any written or oral statements to clearly show the form is false.

In this situation, the employer must submit the questionable Form W-4 to the IRS and not withhold federal income tax, unless the IRS notifies the employer otherwise. Unfortunately, as more employees in the workforce are filing questionable Form W-4s, the potential for tax abuse has increased. The IRS is currently identifying and evaluating processing loopholes and other problems with the W-4 processing system. Because employers have so many problems with questionable Form W-4s, [REDACTED] suggests that the IRS post a notice on its website to help them. We will pass that suggestion on to the Form W-4 Coordinator at the Compliance Campus.

I hope the following general rules and citations about filing questionable Form W-4s may help [REDACTED]. Employers withhold Federal income tax from wages paid to employees based on the marital status and number of exemptions shown on the Form W-4 that the employee signs and submits. [Section 3402 (a) and (f) of the Internal Revenue Code (the Code)]. However, the employer is not required to withhold if the employee submits a Form W-4 to the employer certifying he:

- (1) Has incurred no income tax liability for his preceding taxable year
- (2) Anticipates he will incur no income tax liability for his current taxable year

[Section 3402(n) of the Code]

If the employer does not receive a Form W-4 from the employee, the employer must withhold as if the employee is a single person claiming no withholding exemptions [Section 31.3402(f)(2)-1 of the Employment Tax Regulations]. If the employer receives an invalid Form W-4 from the employee, the employer must treat it as invalid for computing withholding. The employer must also inform the employee that the W-4 is invalid and request another form from the employee. If the employee fails or refuses to submit a new Form W-4, the employer must withhold as if the employee is a single person claiming no exemptions. If the employee has a prior Form W-4 in effect, the employer must continue to withhold under it [See section 31.3402(f)(2)-1(e) of the Regulations].

In [REDACTED] example, the employee has submitted a problematic statement attached to the Form W-4 to support his position claiming exemption. However, this attachment does not make the Form W-4 invalid. An employer should treat a Form W-4 invalid when

- (1) The Form W-4 is altered
- (2) The Form W-4 has an unauthorized addition
- (3) The employee clearly indicates that the Form W-4 is false by an oral or written statement [See 31.3402(f)(2)-1(e) of the Regulations].

Because the questionable Form W-4 is considered valid in this example, the employer must submit it to the IRS and not withhold federal income tax.

[REDACTED] is correct that an employer is not required to submit a Form W-4 to the IRS if the employee is not an employee at the end of the calendar quarter. However, if the employer receives a questionable Form W-4 from an employee, the employer can send the Form W-4 earlier in the quarter to the IRS service center. In this situation, the Form W-4 will still be submitted to the IRS even though the wages of the former employee are not subjected to withholding. The submission should include a statement showing the employer's name, address, employer identification number, and the number of copies of Forms W-4 submitted [See 31.3402(f)(2)-1(g)(3) of the Regulations].

If the IRS notifies the employer the Form W-4 he considered valid is defective, the employer will give the employee (assuming the employee is still working for the employer) a copy of the IRS notice. The employer shall also ask the employee for another Form W-4. The employer must withhold amounts from the employee on the basis of the maximum number of exemptions specified in the IRS written notice [See 31.3402(f)(2)-1(g)(v) of the Regulations].

If the employee submits a new Form W-4 that makes a claim inconsistent with the IRS's written notice to the employer, then the employer must disregard it. The employer cannot submit it to the IRS, and must continue to withhold amounts from the employee on the basis specified in the IRS written notice [See 31.3402(f)(2)-1(g)(vi) of the Regulations]. If the employee specifies any circumstances or reasons to justify his claim on the new Form W-4, the employee can submit the new Form W-4 and written statement to the IRS or to the employer, who must then submit it to the IRS. The employer must continue to disregard the new Form W-4 and withhold amounts from the employee on the basis of the maximum number specified in the IRS written notice, unless the IRS advises otherwise in a later written notice [See 31.3402(f)(2)-1(g)(vii) of the Regulations].

Again, I hope this information is helpful. If [REDACTED] has a specific concern about a questionable W-4 Form, he can contact the Compliance Campus at (559) 265-5849. Please call me at (202) 622-6010 or Elliot M. Rogers, [REDACTED], at (202) 622-6040, if you have any questions.

Sincerely,

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Enclosure